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but see *Wineland's Appeal*, 118 Pa. St. 37; *Hays v. Harden*, supra, and I WILLIAMS, EXECUTORS, p. \*69 (111). For requirement as to place of signature before the statutes in question, see *Adams v. Field Exec'r*, 21 Vt. 256; *Lemoyne v. Stanley*, 3 Lev. 1.

See also *In re Shearman's Estate*, 146 Cal. 455; *Wikoff's Appeal*, 15 Pa. St. 281; *Matter of Collins*, 5 Redf. (N. Y.) 20; *Goods of Coombs*, L. R. 1 P. & D. 302; *Goods of Casmore*, L. R. 1 P. & D. 653; *Goods of Woodley*, 3 Sw. & Tr. 429; *Goods of Dilkes*, L. R. 3 P. & D. 164; *Margary v. Robinson*, L. R. 12 P. & D. 8; *Ayres v. Ayres*, 5 Notes of Cases 375; 3 MICH. L. REV. 650. A. McK. B.

CONSTRUCTION OF THE CODE PHRASE "SUBJECT OF ACTION."—Among the many problems of construction which have been presented to our courts by the adoption of the code system of pleading, none has caused as much confusion and conflict as has the provision that causes of action may be joined which "arise out of the same transaction or transactions connected with the same subject of action." This provision was designed in general terms by the legislatures in order to bring within its meaning numberless situations. However broadly the legislatures may have intended it to operate, the courts and learned text writers have struggled to determine upon a fixed signification for each phrase.

The subject has recently received a lengthy and learned treatment by the Wisconsin court in the case of *McArthur v. Moffett* (1910), — Wis. —, 128 N. W. 445. A complaint contained two counts, one a statutory cause of action to quiet title to certain tracts of land, the other a cause of action at law to recover damages for trespass and the cutting of timber on said land. A demurrer filed for improper joinder of causes was overruled and defendant appealed. The court held that the cases were properly joined. They say: "Evidently we are obliged to define the words 'subject of action' to reach an answer. If we say that the subject of the action is the plaintiff's alleged right alone, i. e., his title then could it be said logically that the physical trespass on the land was in anyway connected with the subject? On the other hand, if we say that the subject of the action is the land alone and not the plaintiff's title thereto, could it be said logically that the false claim of title was connected with the subject? The questions suggest that either holding would be too narrow and that with better reason it should be said in a case like the present that the subject of the action is composed both of the land and the plaintiff's alleged title taken together."

The Wisconsin court in this decision has attempted to clarify the numerous code interpretations put upon this phrase. The New York court in an early decision declined to construe the term, reaching the conclusion that as new situations arose the problem would be dealt with. *Wiles v. Suydam*, 64 N. Y. 173. In *Scarborough v. Smith*, 18 Kan. 399, the court held that the "subject of action is simply one of the elements of each of the several causes of action, uniting and combining them together." Some courts incline to the view that the legislature in using the word "subject" meant "subject matter" of the action, and the test to be applied as to the proper joinder of causes is whether

the causes relate to the same physical facts, land or chattels, concerning which the suit is brought. *Dinan v. Coneys*, 143 N. Y. 544, 38 N. E. 715; *Box v. Chicago, R. I. & P. Ry. Co.*, 107 Iowa 660, 78 N. W. 964; *Craft Refrigerator Machine Co. v. The Quinnipiac Brewing Co.*, 63 Conn. 551, 29 Atl. 76. POMEROY in his work on "CODE PLEADING," section 651, p. 905, holds with Justice WOODRUFF in *Xenia Bank v. Lee*, 7 Abb. Pr. 372, that the subject was the plaintiff's primary right. "The primary right always exists and is always the very central element of the controversy around which all the other elements are grouped and to which they are subordinate." In an action for conversion of money, the subject of the action was the "tort or wrong committed." *Scheunert v. Kaehler*, 23 Wis. 523. Where the action declared upon was trespass, the subject was not the land nor the title to the land but the torts that were alleged. *Stolze v. Torrison*, 118 Wis. 315, 95 N. W. 114. BLISS has attempted to reach a definition "Code Pleading" Ed. 3 § 126. "It is not the wrong which gives the plaintiff the right to ask the interposition of the court nor is it that which the court is asked to do for him, but it must be the matter or thing, differing both from the wrong and the relief, in regard to which the controversy has arisen concerning which the wrong has been done; and this is ordinarily the property or the contract and its subject matter or other thing involved in the dispute.

Whatever meaning the courts have read into this phrase, it is logical to believe that the makers of the code intended that the term "subject of action" should have a definite meaning of its own, differing from the terms "cause of action" and "transactions" found in the same provision. The solution of the problem was aided by the reasoning of the court in *McArthur v. Moffett*, supra. The basic element of the count to quiet title was the title to the property, the ultimate ownership; the basic element in the count of trespass was the physical invasion of the land or the disturbance of the plaintiff's possession. The common element, they argue, can not be the primary right involved in the controversy, for two primary rights are involved, the right of ultimate ownership, and the right of possession. The common element can not be the land for the first cause of action is based upon title. Therefore to allow the case to come within the liberal construction of the code they construe the term to mean the specific property plus the right, title or interest there involved in controversy. The court concedes that in all cases where personal actions are involved "the primary right" test is applicable, but in possessory and proprietary actions they decide upon a test composed of two elements, the primary right and the specific property. Upon this extended interpretation of the term, the plaintiff may join to his first cause of action another cause connected with reasonable directness either with the property involved in dispute or with the plaintiff's right, title, or interest therein. H. H. C.